



RESOURCES · USE OF FORCE

Deputies Detailed Facts Support Use of Force

By **DLG Learning Center**

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DAIGLE LAW GROUP

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Certainly, domestic violence calls are considered one of the most, if not the most, dangerous calls for responding officers. Today, we will be discussing another dangerous call – the late-night call that two intoxicated females are refusing to leave the bar. Those of you working the late-night shifts know that members of the weekend party crowd are often difficult to deal with, fail to follow simple directions and their alcohol-infused “courage” can prompt them to fight with officers rather than walk away. So, with that background in mind let’s see what the 8th Circuit^[1] had to say about Officer Hoven’s use of force when the plaintiff – Ms. Fischer – failed to follow the officer’s directions and was eventually placed under arrest.

FACTS

Kathy Fischer and her friend Susan Clynick stumbled their way towards the Andover Bar after sharing three bottles of wine at the plaintiff’s home. The bar owner refused to serve the obviously intoxicated ladies and reminded Clynick that she had previously been barred from the premises. When the ladies refused to leave, the owner called the police and Deputy Hoven responded to the scene.

Deputy Hoven was able to convince Clynick to leave the bar and followed her outside. At Clynick’s request, Deputy Hoven went back inside to tell Fischer that Clynick was leaving. Fischer followed the Deputy out of the bar yelling that the two patrons had a right to stay in the bar then she went back inside to complain to the owner. A short time later, the bar owner came out and asked the Deputy to remove Fischer as well. Deputy Hoven went back inside and told Fischer she would need to leave. Fischer refused and walked around the bar until Hoven put her in an “escort” hold and walked her out of the bar. Fischer continued to yell but did not resist. Fischer had no recollection of her actions or ultimate arrest.

The two women started walking away from the bar, but Fischer suddenly turned and started walking towards the Deputy, wildly waving her arms and placing her hand on his shoulder. Hoven then informed Fischer she was under arrest and grabbed her left arm. As he walked her towards the cruiser Clynick approached him yelling and waving her hands. At the same time Fischer turned and the Deputy “executed an arm bar takedown”. Fischer landed on the ground, fracturing her nose, right hand and suffering facial cuts. She was arrested on a misdemeanor charge of Disorderly Conduct.

Fischer sued the Deputy and County, claiming Hoven used excessive force. The trial court granted the defendants' motion for summary judgment, finding that the Deputy's use of force was reasonable. This appeal followed.

8th Circuit Findings

On appeal Fischer argued that the Deputy's use of force was excessive under the circumstances presented. Fischer claimed she was not resisting arrest or attempting to flee, she did not pose a threat to Hoven and she had not committed a serious or violent crime. Citing past 8th Circuit cases, Fischer contended that when a misdemeanant suffered serious injuries there was an issue of fact that could only be decided by the jury.

The 8th Circuit disagreed. First, there was no factual dispute because Fischer denied any recollection of the incident. Moreover, it was reasonable for the officer to believe that Fischer was resisting and posed a threat to his safety. While Fischer claimed she only turned to talk to her friend, the court observed that Fischer's subjective intent was not controlling. Rather, the question is whether it was reasonable for the Deputy to believe she was resisting. Summarizing the facts, the court found that “*Hoven faced a tense, unpredictable situation – the only officer on the scene, with two hostile, intoxicated individuals. . . Fischer ignored his orders to leave the bar and yelled at him several times. Walking away, she turned around and came close enough to touch his shoulder.*” Under the circumstances, the officer's use of force was deemed reasonable and the trial court's dismissal was affirmed.

WRAP UP

Once again, we see the benefits of the Qualified Immunity defense available to officers in Section 1983 cases. Importantly, the court understands that an officer's use of force must be evaluated based on the facts confronting the officer at the moment – not with the benefit of 20-20 hindsight. While the seriousness of Fischer's injuries makes this a closer case than it might have been, taking the time to properly document your actions during a use of force incident, along with the subject's actions, will be your best defense and support a claim that your actions were reasonable.

1. Fischer v. Hoven, 2019 U.S. App. LEXIS 16572 (8th Cir S.D. 2019) [↑](#)