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POLICE OPERATIONS · RESOURCES

Off-Duty Officers and When to Intervene

By **Daigle Law Group**

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DAIGLE LAW GROUP

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Having an effective Off-Duty policy that provides guidance to officers on their legal responsibilities and required notifications has become essential. With this knowledge comes an important question: what happens if an officer is caught in the middle of a crime while they are off-duty? With current widespread animosity toward the police, officers may question if it is easier to avoid the altercation altogether.

In a 2018, 7th Circuit Case[i], Winnebago County (Illinois) Sheriff's Deputy Frank Pobjecky found himself in an unfortunate situation while off-duty; let's look at the court findings to better understand some possible outcomes when you find yourself off-duty, unarmed, and on camera.

FACTS

On a late Saturday evening Deputy Pobjecky, who was off-duty and unarmed, was waiting for a pizza at Marie's Pizzeria in Rockford, Illinois and talking with the manager when four men, Lamar Coates, Brandon Sago, Desmond Bellmon, and Michael Sago Jr., entered the restaurant. Coates was armed with a revolver and immediately moved towards Pobjecky and the manager, pointing the gun at Pobjecky and the manager demanding money. Bellmon ran to the register and Michael stood by the front door as a lookout. At one-point Coates lowered the revolver which allowed the manager to try and grab it from him, resulting in a struggle with Coates.

Sago and Bellmon joined in the struggle, and Michael started in from the doorway as Pobjecky, who was aware that the manager carried a concealed handgun, retrieved the manager's gun from his waistband. As Coates was losing the struggle for his revolver, Pobjecky engaged each suspect with the manager's gun as the suspects moved around the restaurant. Coates was shot in the back, Bellmon was shot as he moved from behind the counter, Sago was shot as he was running for the front door and Michael was shot three times in the lower back as he crawled to the door. Michael was able to exit the restaurant and died outside on the sidewalk.

Pobjecky then locked the front door and called 911. At no time did he announce himself as a police officer or give a warning to the suspects. The time stamps on the security cameras showed the entire incident lasted thirty-six seconds from the time the suspects first entered the restaurant until Pobjecky fired the last shot. The three surviving suspects were arrested and treated for their wounds. Aside from Coates, none of the suspects, were carrying a firearm. All three suspects were later convicted of felony murder of Michael Sago Jr.

The Plaintiff – James Horton, as administrator for Michael's estate, brought a Section 1983 action alleging excessive force and failure to provide medical care. The district court granted the Defendants' summary judgment motion, dismissing all claims. Horton then filed this appeal to the 7th Circuit.

Court Findings

The 7th Circuit agreed with the trial court although there were conflicting versions of the events surrounding the incident, reviewing the facts in a light most favorable to the Plaintiff still results in a finding for the defendant officers.

The court first looked at the excessive force claim and was quick to acknowledge the deadly and confusing nature of the circumstances facing off-duty Deputy Pobjecky. The court noted:

Judges view facts from afar, long after the gun smoke clears, and might take months or longer to decide cases that forced police officers to make split-second decisions in life-or-death situations with limited information. We as judges have minutes, hours, days, weeks, even months to analyze, scrutinize and ponder whether an officer's actions were 'reasonable,' whereas an officer in the line of duty all too frequently has only that split-second to make the crucial decision. The events here unfolded in heart-pounding real time, with lives on the line. Pobjecky lacked our luxury of pausing, rewinding, and playing the videos over and over.

The court went on to affirm the district court's finding that it was not unreasonable for Pobjecky to believe Michael may be armed and posed a threat. The court summarized that Michael entered the store with the other suspects, wore clothes that could easily conceal a weapon, and advanced towards Pobjecky and the manager as they wrestled with Coates for the suspect's gun. "Under immense pressure, and with limited time, Pobjecky responded to the armed siege with reasonable, appropriate and justified force in compliance with the Fourth Amendment."

The court then turned to the claim that Pobjecky failed to provide medical care in a timely manner. Police officers have a constitutional responsibility to provide medical care to the fullest extent possible. The 7th Circuit has established a four-factor test to determine whether an officer's actions regarding medical care were objectively unreasonable. Those factors are:

1. Whether the officer had notice of the medical need
2. The seriousness of the medical need
3. The scope of the requested treatment
4. The existence of circumstances that might inhibit the officer's ability to provide treatment

Here, the court determined that Pobjecky was aware of Michael's medical need, but the officer was out of ammunition and did not know if there were additional suspects outside. Based on these factors, it was reasonable for Pobjecky to lock the door, call 911 and wait for reinforcements. "It would be unreasonable," the court opined, "to demand him to venture into the night with an empty gun, risking further onslaught, braving the hazards Michael and the other assailants created, to administer treatment to Michael." The court went on to also dismiss the Monell claim against the Sheriff as well as state law claims.

TAKEAWAYS

Certainly, we applaud Deputy Pobjecky's valiant efforts under challenging circumstances. In today's day and age, we never know when we may find ourselves in the middle of an off-duty "incident". Now may be a good time to review a couple of important questions such as:

- What is your agency's policy and state law concerning your authority and civil protections if you find yourself involved in an off-duty incident?
- What measures can you take to assure that, if you are involved in an off-duty incident, responding officers don't mistake you for a suspect?

It is essential to have a strategic plan ahead of time as these high-stress situations can happen at any moment and you may not have the luxury of thinking out your actions. You can also be sure that wherever you go someone or something will be filming you; in this case it was beneficial to Pobjecky that there was a camera involved as it helped him prove that his actions were the right ones and that his retelling of the events and facts surrounding the robbery were fact and not fiction. So before your next slice, make sure you consider all of your options should you be called to action in the heat of the moment without your badge or weapon.

Horton v. Pobjecky, et al 883 F.3d 941 (7 Cir 2018)

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