

## UOF Following a Pursuit and Plaintiff Safety – Third Circuit

### Description

Our case today comes to us from the Third Circuit and involves both qualified immunity and alleged excessive force. The facts of this case get a little hectic and in order to fully understand the court's decision it is important to review how an officer is entitled to qualified immunity. When deciding if an officer is entitled to qualified immunity the officer's actions must not violate a suspect's clearly established constitutional rights. It is also important to note that a court must follow the facts of the case through the plaintiff's perspective, not the officers. Because the facts of this case differ not only from plaintiff to officer but from multiple officers on the scene, qualified immunity becomes a little more complex. The question of force is also an especially tough one in this case because one of the investigators alleges that he used force to help the plaintiff from falling out of a window. Let's review the facts surrounding the incident and discuss key takeaways moving forward.

### Facts

Officers with the City of Reading Police Department went to Jose Peroza-Benitez's apartment to execute a search warrant related to suspected drug offenses. When officers broke down the door to the third-floor apartment, Peroza-Benitez climbed out of his bedroom window onto the roof of the building wearing only an undershirt, boxer shorts, and flip flops. Shortly thereafter, Peroza-Benitez realized the police were in pursuit and, instead of surrendering, led the officers on a rooftop chase. One of the officers pursuing Peroza-Benitez on the roof radioed that the suspect had a gun. During the pursuit, Peroza-Benitez dropped the gun, which fell off the roof and landed on the ground in an alley below.

At the end of the block, Peroza-Benitez entered an abandoned building. Several officers, including Criminal Investigator Kevin Haser and Officer Darren Smith followed him into the abandoned building. When CI Haser and Officer Smith cornered Peroza-Benitez on the second floor, he climbed out of a street-facing window. By the time Peroza-Benitez climbed out of the window, C.I. Haser was aware that he was unarmed and shifted his attention to Peroza-Benitez's safety, recognizing that the over ten-foot fall from the window could result in injury.

With their firearms holstered, Officer Smith and C.I. Haser grabbed ahold of Peroza-Benitez and attempted to pull him back through the window. Both Officer Smith and C.I. Haser testified that Peroza-Benitez, who was injured and "slippery" as he was covered in his own blood, resisted their efforts.

According to Peroza-Benitez, as he was hanging from the windowsill with his hands, his feet "dangling," C.I. Haser "repeatedly" punched him in the temple region of his head with a closed fist. C.I. Haser testified that he punched Peroza-Benitez "[o]ne or two times . . . [p]robably two," with the intent to "stun" and "disorient" Peroza-Benitez into compliance "to help him out." C.I. Haser testified that his punches had no effect on Peroza-Benitez, who continued to resist against the officers' efforts to pull him back inside. At some point, the officers let go of Peroza-Benitez; according to CI Haser, "we're like, screw it, you want to fall, you're gonna fall. So, we let go of him." According to Peroza-Benitez, CI Haser's punches caused him to fall.

Officer Daniel White was among the officers assembled outside the building who witnessed Peroza-Benitez's fall from the window. Officer White had heard the earlier radio transmission that Peroza-Benitez was armed and assumed that was still the case given that he "did not see a lack of a weapon" on Peroza-Benitez when he was hanging from the window.

Falling feet first, Peroza-Benitez's leg hit the railing of an elevated porch before landing backwards with a "thud" into a below-ground, concrete stairwell. At this point, officers' testimony differed as to whether Peroza-Benitez voluntarily moved upon landing; Officer White testified that Peroza-Benitez "started to sit forward" upon landing while another officer testified that "[a]s soon as [Peroza-Benitez] hit the ground, he made a [lunging] motion like he was going to start running again."

In contrast, Peroza-Benitez testified that he hit his head on the concrete steps as a result of the fall and was knocked temporarily unconscious.

Officer White tased Peroza-Benitez after he struck the concrete steps. Accounts differed as to the exact duration of time that elapsed between Peroza-Benitez landing in the stairwell and getting tased, ranging from "as soon as he hit the concrete" to "less than five seconds." However, it was undisputed that Peroza-Benitez was tased either immediately or almost immediately upon landing. Soon thereafter, officers took Peroza-Benitez into custody. Peroza-Benitez was transferred from the scene to the hospital, where he was treated for a variety of injuries.

Peroza-Benitez filed suit under [42 U.S.C. § 1983](#) alleging that several officers used excessive force in violation of his constitutional rights during his arrest, as well as for assault and battery claims under Pennsylvania common law. After the district court granted the officers qualified immunity, Peroza-Benitez appealed as to C.I. Haser and Officer White.

### **Third Circuit Opinion**

The Third Circuit Court of Appeals held that at the time of the incident, it was clearly established that an injured, visibly unarmed suspect had the right under the Fourth Amendment to be free from temporarily paralyzing force while positioned as Peroza-Benitez was.

Next, the court found that a reasonable jury could credit Peroza-Benitez's version and conclude that C.I. Haser "repeatedly" punching Peroza-Benitez in the head had caused him to fall from a second-story window, a clear violation of that right. On the other hand, the court found that a jury could conclude that the facts do not support Peroza-Benitez's account of the incident. Consequently, the court held that there was a genuine dispute of material fact regarding C.I. Haser's conduct, which had to be resolved by a jury; therefore, C.I. Haser was not entitled to qualified immunity.

Concerning Officer White, the court found that at the time of the incident, it was clearly established that a suspect had the right under the Fourth Amendment to be free from excessive force in the form of being tased while visibly unconscious. Although the court recognized that police officers are often forced to make split-second judgments in situations that are tense, uncertain, and rapidly evolving, the court held that a reasonable jury could credit Peroza-Benitez's version of the incident and find that Officer White violated this right. However, the court noted that a jury could find that the facts do not support Peroza-Benitez's account. For example, a jury could find: 1) that Peroza-Benitez was not unconscious and was still trying to flee; 2) that Officer White reasonably believed Peroza-Benitez was armed; or, 3) that there was not enough time for Officer White to recognize that Peroza-Benitez was

unconscious. Consequently, the court held there was a genuine dispute of material fact that had to be resolved by a jury; therefore, Officer White was not entitled to qualified immunity.

## **Takeaways**

A case that just came out of the City of Reading less than three months prior to this case included a lot of the same reasoning ([Martin v. City of Reading](#)), as the Circuit Court cites in their argument. In that case an officer was also denied qualified immunity based off of the use of force risking the plaintiff's overall safety, therefore violating his civil rights. While CI Haser believed he was trying to help the plaintiff overall, punching him in order to calm him may have not been the best way to help him back through the window. Our first thought is always to protect our community and its citizens but there is only so far that we should go if a suspect will not let us help them.

Officer White's reasoning of tasing Peroza-Benitez mainly relied on the idea that he still had a gun, so a jury will need to decide if his UOF was warranted. A key takeaway is to keep up to date with UOF case laws, especially in your area (these two cases very closely mirrored each other and happened within months, each involving a pursuit, tasing and qualified immunity). Keep yourself up to date with training and new court opinions in order to ensure that you are using modern policing principles, especially in today's day and age where all law enforcement is under tremendous scrutiny.

## **Peroza-Benitez v. Smith**

### **Date Created**

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