

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40367
Summary Calendar

Victor Rogers Bell, Jr.,

Plaintiff-Cross
Defendant-Appellant,

versus

Brady Wright Mahan,

Defendant-Cross
Claimant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(1:92-CV-418)

(January 24, 1995)

Before JOHNSON, JONES, and GARWOOD, Circuit Judges.

JOHNSON, Circuit Judge:¹

This is a section 1983 suit in which Victor Rogers Bell accuses Deputy Brady Wright Mahan of using excessive force against him when executing an arrest warrant. The case was brought to a bench trial in the Eastern District, and the trial court ruled in favor of Deputy Mahan. Because we do not find error with the

¹Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to this Rule, the Court has determined that this opinion should not be published.

findings of the district court, we affirm its decision.

I. Facts & Procedural History

Following various criminal charges, Victor Rogers Bell was sentenced to ten years in the Texas Department of Corrections in July of 1989. After serving a portion of his sentence, Bell was released on parole. Bell's parole terms required that he make regular visits to his parole officer. Bell made one of these visits on July 16, 1992. While Bell was at the parole office that morning, Brady Wright Mahan, a deputy sheriff with the Jefferson County Sheriff's Department, approached Bell and informed him that he was under arrest pursuant to an outstanding parole warrant.

After being informed that he was under arrest, Bell proceeded to run out of the parole office, through the parking lot, and towards a residence.² Deputy Mahan chased Bell to the nearby residence. Initially, Deputy Mahan was unable to find Bell. Just as Deputy Mahan was about to abandon his search, he heard a noise in the garage attached to the residence. Deputy Mahan then located Bell hiding in a small garage storage room and requested that Bell accompany him back to the parole office.

Bell resisted arrest and struggled to escape. In an attempt to secure Bell's arrest, Deputy Mahan used mace on Bell. Bell covered his face to protect himself from the mace and then proceeded to struggle harder with Deputy Mahan. The struggle was

²The district court expressly found that Bell was aware that Deputy Mahan was, in fact, a police officer since Bell had previously seen Bell serve arrest warrants on two other parolees that same morning. Additionally, Deputy Mahan was dressed as a police officer and was wearing his badge.

quite heated and the two pushed each other into a wall and were thrown to the floor. Deputy Mahan and Bell then struggled over Deputy Mahan's gun. Deputy Mahan testified at trial that Bell told him he was going to kill him. As the struggle continued, Deputy Mahan's gun fired twice. One of the bullets hit Bell in his shoulder.³

Bell then brought this section 1983 suit alleging that Deputy Mahan used excessive force in arresting Bell. The case proceeded to a bench trial on the merits wherein the trial court ruled against Bell. The trial court's reasoning was based on its express finding that the shooting was an accident which occurred due to Bell's violent resistance to lawful arrest. Bell now appeals the district court's decision.

II. Discussion

A district court's purely factual findings are reviewed under the clearly erroneous standard. *United States v. Cardona*, 955 F.2d 976, 977 (5th Cir.), *cert. denied*, 113 S. Ct. 381 (1992). This Court will not substitute itself for the fact finder. *See id.* The conclusions of law derived from a district court's findings of fact, such as whether an officer had probable cause, are reviewed *de novo*. *See id.*

All claims that law enforcement officers have used excessive force in the course of an arrest are analyzed under the Fourth

³After the gun fired, Bell submitted to arrest and agreed to return to the parole office with Deputy Mahan. Deputy Mahan did not even know that Bell had been shot until the two were walking back to the parole office.

Amendment's "reasonable standard." *Johnson v. Morel*, 876 F.2d 477, 479 (5th Cir. 1989). Bell can prevail on an excessive force claim only by proving each of the following three elements:

- (1) a significant injury,⁴ which
- (2) resulted directly and only from the use of force that was clearly excessive to the need; and the excessiveness of which was
- (3) objectively reasonable.

Id. at 480. When any one of these elements is lacking, the plaintiff's case fails. *Id.*

There is a more than sufficient basis from which the trial court could have found that Bell should not prevail on his excessive force claim. The district court was correct in ruling that Deputy Mahan's actions were justified under the circumstances. Deputy Mahan was involved in a physical struggle with a fugitive over a loaded weapon. Deputy Mahan had more than a sufficient basis to believe that his life was in danger to the point that an exercise of deadly, self-defensive force would be both reasonable and necessary.

⁴After a Fifth Circuit decision in 1994, the plaintiff is no longer required to demonstrate that a significant injury occurred due to the excessive force. See *Harper v. Harris Co.*, 21 F.3d 597, 600 (5th Cir. 1994). However, as that case recognized the objective reasonableness of an officer's conduct must be evaluated under the law as it existed at the time of the alleged violation of the plaintiff's constitutional rights. See *id.* at 600-01. Therefore, the *Johnson* test would apply in full to this case as to evaluating a constitutional claim based on excessive force grounds. See *id.*

At any rate, the significant injury inquiry is irrelevant to the case at bar since the decisive factors of this case are the remaining *Johnson* factors evaluating excessiveness of force and reasonableness of force. These two prongs of the excessive force test remain firmly intact. See *Harper*, 21 F.3d at 600.

Further, given the circumstances it cannot be said that the force used was excessive. The trial court acting as fact finder expressly found that the shooting was an accident.⁵ Given the fight that was transpiring between Deputy Mahan and Bell, a ruling that the shooting was accidental cannot be considered clearly erroneous. Assuming that the shooting was an accident, there could be no clearly excessive use of force since deadly force was never even intended to have been used.

Since Bell has failed to satisfy two essential elements for an excessive force claim under section 1983, the district court's decision must be affirmed.

III. Conclusion

This Court will not second guess the officer on the beat who must make split second decisions in life-or-death situations. Deputy Mahan's behavior appears to have been a legitimate and even heroic exercise of police authority. Consequently, the district court had a more than sufficient basis on which to rule against Bell's excessive force claim.

AFFIRMED.

⁵Notably, the district court also expressly found that Bell was a witness who completely lacked credibility. This lack of credibility further strengthens the district court's judgment against Bell.