

## **Mental Illness Response – The need to Follow Policy and Training**

Over the last year, there has been a significant increase in use of force incidents involving those who suffer from mental illness. The United States Supreme Court clarified the need for effective training and policy on how your department handles these high risk contacts. In May of 2015, the U.S. Supreme Court issued its decision in *Sheehan v. City and County of San Francisco*<sup>1</sup>. During its analysis, the Court sidestepped the concern regarding use of force incidents against these individuals. The initial question before the Court was whether the ADA “requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody.” This is an important question and could have serious consequences for use of force policy and training standards. Rather than address this question, however, the Court instead analyzed whether Qualified Immunity applied. The Court held that police officers were entitled to qualified immunity against a constitutional claim based on alleged failure to accommodate a disability under the Americans with Disabilities Act because any such constitutional right, assuming it exists, was not clearly established.

The facts of the case are as follows: A social worker at a group home, Hodge, informed Officer Katherine Holder and Sgt. Kimberly Reynolds that Sheehan had been off her medications for months, had not been taking care of herself, and threatened to kill him with a knife when he entered her room to check on her. Hodge said he cleared the building of other residents and the only way out of the room, other than the main door, was a second floor window that could not be used for egress without a ladder. Hodge showed the officers a committal application describing Sheehan's conduct, including his finding her in bed with a book over her face. Sheehan did not respond to several of Hodges' comments, and then suddenly got up and yelled at him, "Get out of here! You don't have a warrant! I have a knife and I'll kill you if I have to!" Sheehan then slammed the door shut and locked it. The application noted she was a danger to others and gravely disabled. Hodge did not check the box indicating she was a danger to herself, and he did not give the officers any reason to believe she was suicidal or likely to injure herself.

The officers knocked and announced, and then used a key to open the door. They found Sheehan lying on her bed with a book on her chest or stomach. Sheehan grabbed a knife and walked aggressively toward the officers saying, “Get out of here. I'm going to kill you. Get out of my room. I don't need your help.” The officers retreated to the hallway and Sheehan closed the door. The officers called for backup, but rather than waiting, forced entry into the room by repeatedly kicking and striking their shoulders against the door. According to the officers, they had their guns drawn and observed Sheehan advance on them, brandishing the knife. When pepper spray did not stop her, the officers fired their guns, striking Sheehan five or six times. She was only two to four feet from Officer Holder when the first shot was fired, and she was still holding the knife after she fell to the floor.

On appeal from the District Court's granting of summary judgment in favor of the officers, the 9th Circuit found that the initial entry was lawful under the emergency aid exception, which requires an objectively reasonable belief that there was an immediate need to protect others or themselves from serious harm. The Court noted, however, that the entry might be invalid if carried out in an unreasonable fashion. Although the initial entry was reasonable, there remained issues of fact as to whether the second entry was reasonable.

Although the justification for the second entry existed under an independent, emergency aid exception, or as part of a single continuous search and seizure, the reasonableness of the scope and manner of the entry remained in question. The Court noted that the officers could have avoided harm by retreating, and that the knife was not in imminent danger of destruction and there was no fear of Sheehan's escape.

The Supreme Court questioned the reasonableness of the decision to use force during the second entry without taking into account Sheehan's mental illness, and an apparent departure from police training. Plaintiff's expert report stated that officers are trained when dealing with emotionally disturbed or mentally ill persons not to unreasonably agitate or excite the person, to contain the person, to respect the person's comfort zone, to use nonthreatening communications and to employ the passage of time to their advantage. Department materials advised officers to request backup, calm the situation, to communicate, to move slowly, to assume a quiet, nonthreatening manner, to take time to assess the situation, and to give the person time to calm down.

The officers had no reason to believe that a delay in reentering the room would cause serious harm. Once the door was closed there was no threat to the safety of the officers or others, and they knew that mentally ill and emotional disturbed individuals are not likely to respond rationally to police breaking down a door. In use of force cases, courts balance the amount of force applied against the need for that force. In this case, the intrusion in breaking the door with great force, without warning, and with guns drawn, was balanced against the minimal interest in securing an emotionally disturbed person contained in her room, who presented no danger to others or apparently herself, with backup on the way, and trained negotiators, who could possibly diffuse the situation,. Acknowledging that deadly force is reasonable if an officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others, the Court then considered whether the shooting was reasonable when the events leading up to the shooting are taken into account. Unlike the immediate threat doctrine in the Second Circuit, the Ninth Circuit recognizes liability when an officer's intentional or reckless acts, amounting to a Fourth Amendment violation, provoke a violent confrontation. The Supreme Court stated that in this case, a jury might find that the forced entry was unconstitutional and provoked Sheehan's acts that led to the shooting.

In this case the Ninth Circuit joined the majority of circuits, finding Title II of the ADA applies to arrests. It is undisputed that the officers knew Sheehan had a disability. The question remaining for the jury was whether the City discriminated against her by failing to accommodate her during the second entry, when the officers forced entry without taking her mental illness into account. The

Court found that a reasonable jury could find that the situation had diffused sufficiently to afford the officers time to wait for backup and employ less confrontational tactics.

The City of San Francisco appealed the case to the United States Supreme Court on the two questions presented above. The United States Supreme Court, however, refused to decide question one, whether the ADA requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody, as that question was not properly before the Court. The Court wrote: “we simply decide whether the officers’ failure to accommodate Sheehan’s illness violated clearly established law.”

With regard to the 4<sup>th</sup> Amendment claim, the Court agreed with the 9<sup>th</sup> Circuit on several points. It found that the officers did not violate the 4<sup>th</sup> Amendment when they opened the door to Sheehan’s room for the first time. The Supreme Court stated that law enforcement officers may enter a home without a warrant to render emergency assistance to an injured person or to protect an individual from imminent injury. The Court further stated, **if Sheehan hadn’t been disabled**, opening the door the second time would not have violated any constitutional rights as the two entries were “part of a single, continuous search or seizure.” Furthermore, the officers knew Sheehan had a weapon and had threatened to kill individuals. The Court concluded that it is reasonable for law enforcement to move quickly where delay would “gravely endanger their lives or the lives of others.”

The question, therefore, became whether opening the door the second without attempting to accommodate Sheehan’s disability changed an otherwise valid entry into an unconstitutional entry. The Court found that the officers were entitled to qualified immunity as the law was not clearly established that an officer must try to accommodate a mentally impaired subject when the officer otherwise has justification to make entry to the premises. The Supreme Court reversed the 9<sup>th</sup> Circuits decision, in part, and remanded for further proceedings.

While the issue of using physical force on those who may possibly require accommodations has not been clarified, we can assume the issue will make its way back to the Court in the future. Supervisors should focus on ensuring that officers follow the policy and training of the department and this focus will guide to the way to handle these difficult situations.

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<sup>1</sup> 135 S.Ct. 1765, May 18, 2015