



EIGHTH CIRCUIT HOLDS HOME ENTRY REASONABLE

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On July 19th, 2016, the Eighth Circuit Court of Appeals decided *Shultz v. Buchanan et al.*ⁱ, which serves as an excellent review of the law pertaining to home entry based on exigent circumstances and use of force under the Fourth Amendment. The relevant facts of *Shultz*, taken directly from the case, are as follows:

On March 20, 2011, Buchanan was dispatched to Shultz's residence in response to a citizen complaint that a man had trespassed on the citizen's property and attempted to start a fight. Before Buchanan arrived at Shultz's home, Shultz and his friend, William Vaughn, had been in an altercation with two other men near a former resort community called "the beach club."

Vaughn had entered an abandoned building looking for a string or wire to use as a leash for his dog and was confronted by a man who shoved Vaughn and threatened harm if Vaughn did not leave the property. Vaughn met Shultz on the road near the abandoned building and told him what happened. The man from the building and a companion then started to walk up a hill toward Shultz and Vaughn while shouting threats at them. In response, Shultz told the men: "You need to keep your asses down at the bottom of the hill 'cause if you come up here fucking with me, you're making a mistake." The approaching men said they were going to call the police; Shultz and Vaughn left for Shultz's house.

Buchanan arrived at Shultz's home thirty to forty-five minutes later. Shultz and Vaughn were sitting under the carport. Shultz's wife, Jennifer, was sitting in a truck in front of the house, listening to music. The Shultzes' three children were also home.

Shultz was upset when Buchanan arrived. He knocked his chair over when he stood up, but claimed that he was "very quiet." Buchanan believed (correctly) that both Shultz and Jennifer had been drinking, and he observed blood on Shultz's shirt. Shultz and Jennifer

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approached Buchanan near his patrol car. Buchanan asked Shultz what had happened at the beach club. Shultz replied that two men had confronted them, and that Shultz had told the men "that they needed to stay down at the bottom of the hill because, if they come up here fucking with me, they're making a mistake."

Buchanan told Shultz to control his attitude and asked Shultz again what happened. Shultz gave the same response, and Buchanan again told Shultz to control his attitude. Shultz, Jennifer, and Buchanan talked further, and Shultz asked Buchanan if he was under arrest. Buchanan replied that Shultz was not under arrest, and Shultz walked into his house.

After Shultz entered the house, Buchanan called for backup and asked Jennifer to go into the house and ask Shultz to come back outside. According to Jennifer, Buchanan said that he would not arrest Shultz if he came outside before the backup officers arrived. Buchanan did not believe that Shultz posed a danger to Jennifer, because they had been "getting along."

Jennifer went inside and relayed Buchanan's message to Shultz. Shultz raised his voice, told Jennifer to "shut the fucking door," and said that if Buchanan came into the house, "it would be his badge." Shultz moved toward the bedroom, tripped over a jug of cat litter, and "slung" it off to the side. Buchanan heard yelling and screaming coming from inside the house. He heard "a loud thud" that caused the windows to shake and observed children run out of the house screaming. Buchanan also heard Shultz yell that he was not coming out without a blood bath.

Buchanan then entered the house and asked Shultz if he was going to come back outside to speak with him. Shultz declined to go outside or continue speaking with Buchanan. Jennifer testified that Buchanan shoved her against a wall to move her out of the way as he followed Shultz into the bedroom. Buchanan said that when he attempted to grab Shultz to take him outside, Jennifer got between the two men and tried to push Buchanan back.

Shultz testified that Buchanan followed him into his bedroom with a Taser drawn and pointed the device at Shultz. Buchanan told Shultz that he was going to arrest him. Shultz asserted that he put his hands in the air "in surrender position" and said "that's not necessary." According to Shultz, however, Buchanan stood approximately four feet from him, said "you asked for it," and deployed the Taser. Buchanan, by contrast, states that Shultz refused to comply with orders, and that he warned Shultz that he would be tased if he did not stop resisting.

The probes of the Taser made contact with Shultz's arm, and he fell back onto the bed. Shultz sat up on the bed and moved as if to pull the Taser's probes out of his arm. Buchanan testified that Shultz broke the leads off the Taser. Shultz asserted that Buchanan yelled at him not to remove the probes, told Shultz that he "better fucking

comply," and deployed the Taser a second time. Shultz testified that Buchanan deployed the Taser again a third time, applying the Taser directly to Shultz's thigh. Five to seven officers then entered Shultz's home, tackled him off of

his bed, and handcuffed him. Jennifer corroborated Shultz's account of the events, asserting that she witnessed the tasing and screamed at Buchanan to stop.

Shultz was arrested and charged with resisting arrest, fleeing, and disorderly conduct. The officers also arrested Jennifer and charged her with obstructing government operations. Shultz and Jennifer pleaded no contest to a charge of public intoxication, and the State declined to pursue the other charges. Shultz suffered some temporary marks on his legs and arms from the Taser, but neither Shultz nor Jennifer sustained any permanent injuries, and neither missed any work.ⁱⁱ

The Shultz's sued Officer Buchanan, the City and several other officers. The district court dismissed the suit in favor of the officers and the city and the Shultz's appealed to the Eighth Circuit Court of Appeals. The issues from appeal that we will discuss are (1) whether Officer Buchanan violated the Fourth Amendment when he entered the Shultz's residence without a warrant, (2) whether the officer impermissibly created the exigent circumstance that he used to enter the residence without a warrant, (3) whether the officers used excessive force when they Tased Shultz, and (4) if the City was liable for maintaining a policy that led to the alleged violation of the Shultz's rights.

Issue One: Did Officer Buchanan violate the Fourth Amendment when he entered the Shultz home without a warrant?

The Eighth Circuit first looked at the law pertaining to entry into private premises. The court stated

Searches of a home without a warrant are presumptively unreasonable, *Michigan v. Fisher*, 558 U.S. 45, 47 (2009) (per curiam), but there are exceptions. One exception allows law enforcement officers to enter a home without a warrant to provide emergency assistance to an injured person or to protect a person from imminent injury. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).ⁱⁱⁱ [emphasis added]

In this case, Officer Buchanan argued that he had exigent circumstances to enter the residence without a warrant, particularly to protect Mrs. Shultz from imminent injury. Facts that support the finding of exigent circumstances are (1) Shultz had been drinking, (2) he was angry and knocked his chair over in front of the officer when he stood up, (3) Mrs. Shultz entered the home after Mr. Shultz to ask if he would come back outside, (4) the officer heard yelling, children screaming and loud thump that sounded like something was thrown or someone hit a wall. Based on these facts, the court stated

Buchanan was not required to have "ironclad proof of a likely serious, life-threatening injury to invoke the emergency aid exception." *Fisher*, 558 U.S. at 49 (internal quotation marks omitted). Under these circumstances, a reasonable officer in Buchanan's position could have concluded that there were reasonable grounds to believe that a person in the Shultz home was in need of immediate aid. See *Anderson v. Creighton*, 483 U.S. 635, 641-43 (1987). The entry thus did not violate

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Shultz/s clearly established rights. [iv]

Thus, the court found it was reasonable for the officer to believe exigent circumstance to make warrantless entry were present.

Issue Two: Did the officer impermissibly create the exigency that he used to justify the warrantless entry?

Regarding the legal principal that governs this issue, the court stated

In *Kentucky v. King*, 563 U.S. 452 (2011), the Supreme Court held that **the "exigent circumstances rule justifies a warrantless search when the conduct of the police preceding the exigency is reasonable" within the meaning of the Fourth Amendment.** *Id.* at 462.^{iv} [emphasis added]

In other words, if the conduct of the police that immediately precedes the exigency does not violate the Fourth Amendment, then it is not a Fourth Amendment violation to act upon the exigency. In this case, it was not a violation of the Fourth Amendment for Officer Buchanan to ask Mrs. Shultz to ask her husband if he would come back outside. As such, he is entitled to rely on the emergency aid exception (exigency) to justify his entry. Specifically, the court stated

By asking Jennifer to go into her home and ask Shultz to come outside for further discussion, he did "no more than any private citizen might do." See *id.* at 469. Because Buchanan "did not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment," he is entitled to rely on the emergency aid exception to justify his entry.^v

Issue Three: Did the officer use excessive force when he Tased Shultz?

Shultz argued that the officer used excessive force when he deployed his Taser multiple times for a minor crime, that he did not pose a threat, and he was not actively resisting arrest.

Regarding the relevant law that pertained to this issue, the court stated

As of March 2011, however, it was not clearly established that an officer violated the rights of an arrestee by applying force that caused only *de minimis* injury. *LaCross v. City of Duluth*, 713 F.3d 1155, 1158 (8th Cir. 2013); *Chambers*, 641 F.3d at 908. Before our June 2011 decision in *Chambers* clarified the analytical distinction between *de minimis* force and *de minimis* injury, "a reasonable officer could have believed that as long as he did not cause more than *de minimis* injury to an arrestee, his actions would not run afoul of the Fourth Amendment." *Bishop v. Glazier*, 723 F.3d 957, 962 (8th Cir. 2013) (quoting *Chambers*, 641 F.3d at 908). **Although a Taser has a "unique capability to cause high levels of pain without long-term injury, 'we have not categorized the Taser as an implement of force whose use establishes, as a matter of law, more than *de minimis* injury."** *Hollingsworth v. City of St. Ann*, 800

F.3d 985, 990-91 (8th Cir. 2015) (quoting *LaCross*, 713 F.3d at 1158).^{vi} [emphasis added]

In this case, Shultz sustained temporary marks on his arms and legs from the Taser but no permanent scars. The court stated that these amount to *de minimis* injury. They also noted that Shultz did not miss work due to injuries, did not see a doctor, and did not need counseling or medicine despite stating that he felt anxiety after the arrest. Since his injuries were *de minimis*, the officer is entitled to qualified immunity on the excessive force claim.

Issue Four: Did the City maintain an unconstitutional policy that led to Shultz's alleged violations?

The court stated that, even if the City had a policy that could possibly lead to a constitutional violation, in this case no violation occurred. Since in order to maintain a suit against a city or county a plaintiff must establish an underlying violation, and since no underlying violation occurred in this case, the court held that the district court correct dismissed this claim.

As such, the Eighth Circuit Court of appeals affirmed the decision of the district court.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

ⁱ No. 15-1854 (8th Cir. Decided July 19, 2016)

ⁱⁱ Id. at 2-5

ⁱⁱⁱ Id. at 6-7

^{iv} Id.

^v Id.

^{vi} Id. at 8-9