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UNITED STATES DISTRICT COURT
FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LOUIS MILES
vs.
WILLIAM B. DICKEY

DOCKET NUMBER:
2:07-CV-950-MHT

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

* * * * *

HEARD BEFORE: The Hon. Myron H. Thompson
HEARD ON: February 8, 2011
HEARD AT: Montgomery, Alabama.
APPEARANCES: Charles Stewart, Esq.
Summer Davis, Esq.
Wallace Mills, Esq.

MITCHELL P. REISNER, RMR, CRR
Official Federal Court Reporter
U. S. District Court for the Middle District of Alabama
(334) 235-8218 / TopStenoman@yahoo.com

1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HEARD BEFORE THE HON.
2 MYRON H. THOMPSON ON FEBRUARY 8, 2011 AT THE UNITED STATES
3 COURTHOUSE IN MONTGOMERY, ALABAMA:

4 FINDINGS OF FACT

5 AND

6 CONCLUSIONS OF LAW:

7 THE COURT: Counsel the Court has considered the
8 evidence and now makes its, or reaches its, findings of fact and
9 makes its conclusions of law.

10 Plaintiff Louis Miles has sued defendant W. B. Dickey,
11 an officer, claiming that Dickey used excessive force when he
12 employed a canine assistant to subdue Miles during an arrest.
13 Miles sustained numerous bite wounds during the attack and seeks
14 to recover compensatory and punitive damages as well as
15 reasonable attorneys' fees for violation of his Fourth Amendment
16 right against excessive force.

17 Between one and two a.m on the morning of September
18 ten, two thousand seven, a business security alarm alerted
19 Montgomery police. Officer Dickey and his canine assistant
20 responded to the alarm at Mainline Supply Company. Dickey saw
21 that the gate leading to the rear of the property was partially
22 opened, and the padlock cut. He called for backup and proceeded
23 on to the property to investigate.

24 He saw Miles's silhouette inside the building, and then
25 observed him exit the business carrying two boxes of metal

1 fittings toward a Jeep. As Miles approached the Jeep, Dickey
2 identified himself. Dickey initially told Miles three times to
3 stop and lie down or he would release the dog.

4 Miles dropped the boxes and then attempted to go inside
5 the building. Dickey then released the canine to prevent Miles
6 from escaping into the business. The canine assistant, known as
7 "Zak," chased Miles and bit and held his arm. Miles then
8 resisted, probably out of fear that he was being attacked by the
9 dog, but nonetheless resisted and the dog continued to bite in
10 an attempt to get a hold on Miles.

11 The dog bit both Miles's left arm as well as his right
12 arm. The struggle continued as long as Miles continued to
13 resist. I don't believe that it lasted three to four minutes.
14 It probably seemed like that, but it didn't last that long.
15 When Miles finally dropped to the ground and no longer resisted,
16 Dickey told the dog to disengage and the dog complied.

17 Medics later arrived on the scene and gave an initial
18 treatment for the dog bites. Miles was then taken to the
19 hospital where he received stitches and antiseptic for his
20 wounds.

21 The law in this area is fairly well established. To
22 prevail, Miles must prove each of the following facts by a
23 preponderance of the evidence: First, that Dickey intentionally
24 committed acts that violated Miles' constitutional right not to
25 be subjected to excessive force; and, second, that Dickey's acts

1 were the proximate or legal cause of damages sustained by Miles.

2 With regard to the first element, the determination of
3 whether excessive force was used during an arrest requires
4 careful attention to the facts and circumstances of each
5 particular case, while keeping in mind that police officers are
6 often forced to make split second judgments in circumstances
7 that are tense, uncertain and rapidly evolving with the amount
8 of force that is necessary in a particular situation.

9 In evaluating claims of excessive force, courts usually
10 consider several factors. And they are the severity of the
11 crime at issue, the risk of harm to the officer or others, and
12 whether the suspect is resisting arrest or fleeing.

13 The law is also clearly established that government
14 officers may not use gratuitous force against a prisoner, or in
15 this case someone who has been arrested who has already been
16 subdued. In other words, the use of force maliciously and
17 sadistically to cause harm is clearly established by law.

18 The first issue confronting the Court is whether there
19 was a reasonable basis for Dickey to use his dog to attack
20 Miles. The Court believes there was.

21 This was a nighttime incident. It appeared that at
22 least, and I think reasonably, to Dickey that Miles planned to
23 reenter the building. He decided that the less intrusive force
24 to use would be a dog, and he had warned Miles not to resist.
25 He was also by himself, which is probably the most important

1 factor.

2 I think under these circumstances to have used a dog
3 when confronting someone in the dark -- or essentially at night
4 I should say, there was light -- was reasonable. Also, it was
5 clear that Miles had his car there and there was also the
6 possibility of using the car as well; that is, Miles' use of the
7 car.

8 The more troubling factor is the amount of injury
9 caused by the dog to Miles. I don't believe that Dickey used
10 the dog either initially or throughout the entire incident
11 either maliciously or sadistically to cause harm. At the same
12 time, I don't buy Dickey's argument or testimony that Mr. Miles
13 was actually attacking the dog. I am convinced, however, that
14 the dog attacked Miles because Miles was resisting the dog,
15 perhaps even out of fear. Indeed, I think he was afraid of what
16 was happening, and I think he continued to resist. And as a
17 result, I think the dog continued to attack.

18 I think it's just an unfortunate scenario that happened
19 that night. However, I think the dog did act reasonably in
20 light of the overall circumstances because Miles did not -- was
21 not subdued or he did not cease resisting. As a result, I think
22 that the dog's actions were reasonable as well.

23 Do I need to make any other findings of fact?

24 MR. STEWART: No, Your Honor.

25 MR. MILLS: I don't believe so, Judge.

1 THE COURT: As I said before, I do think it's an
2 unfortunate scenario, Mr. Miles, but I really don't think Mr.
3 Dickey acted maliciously or sadistically. And I think you
4 probably don't remember it that clearly, but I think you did
5 probably resist and I think the dog was unwilling to give up
6 until you had given in.

7 I'd like to thank Counsel for the plaintiff very much.
8 Both of you did an excellent job of presenting this case to the
9 Court. I'd like to commend you both.

10 MR. DAVIS: Thank you, Judge.

11 THE COURT: Anything else, Counsel?

12 MR. MILLS: No, Your Honor.

13 THE COURT: The Court will enter judgment for the
14 defendant.

15 Court's in recess.

16 (Whereupon, the proceedings were concluded.)

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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter as prepared by me to the best of my ability.

I further certify that I am not related to any of the parties hereto, nor their counsel, and I have no interest in the outcome of said cause.

Dated this 10th day of February 2011.

/S/ Mitchell P. Reisner
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter