

A use-of-force expert testimony on April 13, 2021



Defense:

Now, based upon your training and experience and your expertise in the use of force matters, your review of the materials that have been provided to you, have you formed opinions in this particular case to a reasonable degree of professional certainty?

Witness:

I have.

Defense:

And can you just briefly overview your opinions in this particular case?

Witness:

I felt that Derek Chauvin was justified, was acting with objective reasonableness, following Minneapolis Police Department policy, and current standards of law enforcement in his interactions with Mr. Floyd.

Defense:

We've heard a lot over the last couple of weeks about the Graham versus Connor factors. Are you familiar with the Graham versus Connor factors?

Witness:

I am.

Defense:

And can you just very briefly provide your definition, and how you look at those factors?

Witness:

So in my 35 years of teaching, it's not just dealing with tactics, but it's dealing with providing an officer the mindset that what they need to justify to use various tactics that they were trained in. And the standard of Graham versus Connor is, what would a reasonable officer have done in a similar set of circumstances that you're doing?

Defense:

Now? The Graham versus Connor factors, the first one is the severity of the crime at issue, correct?

Witness:

Yes.

Defense:

How do you analyze that Graham versus Connor factor?

Witness:

So I know in my experience and the experience of officers that I've been in contact with, is that the higher risk an arrest may be, like say an armed bank robber, armed bank robber, you would pull your gun, order him to the ground to take them into custody. You know their danger, you know, their threat level right off the bat. Whereas, I can't imagine how many times I've been exposed to personally, or have seen other officers dealing with a simple thing as a traffic stop, or a jaywalking violation, or some minor offense, and they end up in a fight for their life just because of the conduct of the individual they're contacting.

Defense:

Okay. So in terms of the severity of issue, is it always, what was the initial response? Or is it something that evolves over time?

Witness:

Well, the initial response of course is important, but it's really how the person you're interacting with, as a law enforcement officer, responds to you.

Defense:

Okay. And does that go into the second Graham factor?

Witness:

It does. The imminent threat.

Defense:

Right. And can you just explain the imminent threat factor?

Witness:

So imminent is, from a police officers standpoint, you don't have to wait for it to happen. You just have to have a reasonable fear that somebody is either going to strike you, stab you, shoot you. So you try to plan to deal with the imminent threat, and then you adjust your tactics accordingly, based upon how the suspect is reacting to you.

Defense:

Okay. And the third Graham factor is whether the suspect is actively resisting, or attempting to evade, correct?

Witness:

That's correct.

Defense:

And can you explain that to the jury?

Witness:

So again, the level of resistance is commensurate with how they resist you, justifies an officer to use a variety of tools on their tool belt. So if a suspect is

resisting your efforts to handcuff them, and they spin away and try to punch you, an officer doesn't have to go fist on fist with them. The officer's allowed to escalate, to use an impact weapon, taser, pepper, spray, or other tools.

Defense:

Now, in terms of, again, the analysis of Graham versus Connor, are there other factors, or components of that analysis that are relevant?

Witness:

Yes.

Defense:

Can you explain some of those?

Witness:

So as you're reviewing an incident such as this, you have to try to see it through the eyes of the officers on the scene. What factors were they dealing with? What circumstances, what was the suspect doing? What were onlookers doing? Were there environmental hazards? And then try to put yourself in the officer's shoes to see the decisions they made, were they objectively reasonable or not?

Defense:

So you would agree with the other people who've testified in this case that the standard involves objective reasonableness.

Witness:

Yes I do.

Defense:

Based on the totality of facts and circumstances of this case?

Witness:

That were present to the officer at the time.

Defense:

And a view from a reasonable police officer on the scene.

Witness:

Yes.

Defense:

And what about hindsight?

Witness:

So, it's easy to sit and judge in an office, on an officer's conduct. It's more of a challenge to, again, put yourself in the officer's shoes to try to make an evaluation through what they're feeling, what they're sensing, the fear they have and then make a determination.

Defense:

And does that prohibit, or preclude a review of a police officer's conduct? No, not a review. No.