

Non-Sworn Park Agents/Officers and the Use of Force

By Dr. Matt Stiehm

Introduction

Law enforcement officers have the ability to use force as set forth in state statute, federal law and case law. The use of force comes originally from the United States Constitution 4th Amendment, as anytime that you are using force it goes with a seizure of an individual. It is easy for licensed law enforcement (sworn) to understand where they stand when it comes to the application of force because the United States Supreme Court has provided case rulings on how to handle force to include *Tennessee vs. Garner* (lethal force), and *Graham vs. Connor* (reasonable force). But what happens when the organization employs park law enforcement (ranger/park service officer)? Park law enforcement officers generally work only in secluded areas with little or no back up. This article will exam both licensed park law enforcement and non-sworn park ranger/law enforcement.

We must first define what force is however in reviewing documents there is no one single common definition “[i]n dozens of studies of police use of force there is no single, accepted definition among researchers, analysts or police” (COPS, n.d. para. 2). The same COPS web-site further states that the IACP has defined five distinct components of force, however these components are more implements of force to include delivery systems, and other assorted weapons (COPS, n.d). The federal government, COPS Office and the Bureau of Justice Statistics further compound the issue because there is no universally accepted definition of reasonable and necessary which are the primary terms used to provide clarity on the application of force by law enforcement officers. As mentioned above these cases have their foundation in the Fourth Amendment of the United States Constitution.

To specifically understand how use of force is applied by non-sworn park service officers one can conduct an Internet search of [Minneapolis Park Police and Hidden Beach](#) to see the how non-sworn Minneapolis Park Police Agents handle a violate situation. At the ends of this review this incident will be further discussed and broken down.

Continuums

The National Institute of Justice states most law enforcement agencies have policies that guide their use of force. These policies describe a escalating series of actions an officer may take to resolve a situation. This continuum generally has many levels, and officers are instructed to respond with a level of force appropriate to the situation at hand, acknowledging that the officer may move from one part of the continuum to another in a matter of seconds (National Institute of Justice).

The use of force models have been around have been around since 1960. Law enforcement training personnel during the 60-70’s created use of force models to assist law enforcement

officers to understand how to use and apply force (Bostain, 2006). Bostain further states that there is no consensus with how application of techniques are used in different “methods or systems”. To exam this review conduct a search using google.com and the terms use of force continuums, there a many different naming conventions, and “steps”. With this being clear as mud for the licensed park law enforcement officer how do we deal with non-sworn park service officers when they decide to apply or use force and do they have the authority to use force?

However there has been a recent clash amongst law enforcement use of force experts. Specifically, the International Association of Chiefs of Police, and PERF, stated that the use of force is used and should be followed when determining the “reasonable and permissible “application of the use of force. However there is another camp which has been pushed forward by the Federal Law Enforcement Training Center in which they train law enforcement officers under the premise that Graham holdings are the guiding principles.

Licensed Park Law Enforcement Reasonable Force

Graham V. Connor is the United States Supreme Court case that covers “reasonable” force, the United States Supreme Court allows for a three pronged test when deciding if the level of force was “reasonable” and permissible. As noted by Wallentine (2007); First, what was the severity of the crime that the officer believed the suspect to have committed or be committing? Second, did the suspect present an immediate threat to the safety of officers or the public? Third, was the suspect actively resisting arrest or attempting to escape?

Each state has a slightly different standard(s) for example Minnesota has a necessary component and, in its document, titled Use of Force Legal Issues 2011, the League of Minnesota Cities Insurance argues and describes that police officers need to be able to work in reverse order down the “continuum” of force to be able justify their actions. This seems diametrically opposed to the decision as set forth by Graham, in that law enforcement officers only need to be able to justify the use of force using the three holdings (tests) as listed above. However, upon further examination the LMC document only relates that officers should be able to justify why they did not take action using a lower method of force. The documentation phase is the reporting phase as indicated by a recent IACP report Emerging Use of Force Issues: Balancing Public and Officer Safety, supervisors and managers need to understand how to appropriately investigate force. The Minneapolis Police Department Policy Manual covers the Graham decision in its policy.

Unlicensed Park Service Officers

Non-sworn park police agents/officers are quasi-governmental agents. They are authorized by a political sub-division to take some sort of enforcement action. But where does their authority to use force come from. Do they even have the authority to use force? They are neither sworn or licensed police officers. They are not governed by the same law or are they? Generally, they are uniformed civilian officer(s) driving marked emergency vehicles and wearing a limited duty

belt. They as mentioned above are government agents, arguably they have limited immunity as they are government agents working within their duties as an enforcement officer/agent.

Minneapolis Park Police Agent Incident

In reviewing the use of force incident with the Minneapolis Park Police Agent, we can see the “non” sworn park patrol agents taking enforcement action on a park patron. Minneapolis Park Police Agents have” PB6.5-2. - Park patrol agents are authorized to issue citations for violations of state laws, municipal ordinances and Minneapolis Park and Recreation Board ordinances. (Pk. Bd. Ord. No. 87-101, § 1, 7-1-87)”

The Minneapolis Park Police Agents in this video are clearly wearing a police type uniform, with a limited duty belt. The video is posted on youtube.com and lasts approximately ten minutes. As with all use of force incidents we do not know what precipitated the park police agent’s response. However, it should be presumed that there was a lawful reason for the approach.

There are numerous people around, which would cause for an increase or heightened use of force. However, the officers are attempting to remove the male patron from the area. The male subject appears to use profanity, while other individuals are heard asking about the “charges” or why the Minneapolis Agents are contacting the male individual. There is discussion between a female and traditionally uniformed agent and the male individual indicated that he would accept a ticket from the Agents. The Agents then re-approach the individual in attempt to finish the enforcement stop. At 1:38 seconds the soft uniformed Park Patrol Agent informs the subject that he is not free to leave and affects an arrest.

The male approaches the soft uniform officer in what could be construed as a threatening or intimidating manner. The Agent pushes the individual off, and then the second Agent attempts a take down in attempt to control/detain the suspect. There is an additional black male in a white T-shirt is also involved in the mix of the action and at least two other people involved in the scenario, the girlfriend and a camera man. At the point the male is on the ground wrestling with the Agents the female/girlfriend places her left hand on one of the Agents forehead and the Agent pushes it off. This in Minnesota rises to the level of assault. The female then engages the second Agent and strikes him in his face. The female then is sprayed with a chemical agent. This occurs relatively off camera. At about 3:55 seconds a third uniformed Park Patrol Agent appears as both the male and female suspect are being walked out of the area. A fourth Agent approaches as the male subject is near one of the police vehicles. At this point in the video the three Park Agents attempt to take the male subject to the ground. The female subject is being flushed with fluids to clear the chemical agent. The three Park Agents that are on the male subject also appear to use some control techniques, and one appeared to use a knee strike. At approximately 7:40 seconds the licensed Minneapolis Park Police Officers arrive on scene.

The Park Patrol Agents appears to be well with in policy guidelines set forth by the Minneapolis

City Police Department which is generally adopted by Minneapolis Park Police Department a separate and distinct political sub-division with authorization to create its own police department.

In watching the video we can see that the Park Patrol Agents attempt to use lower levels of control. The lower levels of control failed. The Agents were attacked by a separate and distinct aggressor, this individual was sprayed with a chemical agent. The female subject appeared to escalate her criminal activity to that of a fifth-degree assault. The female subject was finally secured after chemical agents at the time the Minneapolis Park Police Officers arrived. The male subject was warned and instructed to comply, the Agents had at the ready chemical agents to deploy, they informed the subject of their intent to use the chemical agent, the suspect then complied with the directive, and the officers backed off of the use of force option.

Discussion

Did the Park Police Agents in this video act outside of their scope of employment? Did the Agents have the authority to use force? Did the Agents have a duty to protect themselves and others from harm? Did the Agents have a codified authority to enforce rules, laws and ordinances? The answer to all of these questions is YES.

Did the Agents attempt to use lower levels of force? Did the Agents warn and use a variation of control techniques on a situation that was rapidly evolving? Did they have a volatile group of individuals in and around them, basically they were outnumbered? The answer is YES to these questions as well. In looking at and applying Graham, I believe that the officers acted reasonably and within the law.

Conclusion

So where do we go from here, what is the distinction between licensed and unlicensed/non-sworn park patrol agents/officer.

Clearly there is no direct case law on point for unlicensed/non-sworn officers, however there are some clear correlates to sworn law enforcement.

1. Are employed by some government or quasi government agency
2. Are uniformed
3. Are wearing some variation of duty belt with gear ranging from radio, to Taser and everything in between
4. Are trained to some specific level and exception of the application of force
5. Are trained in reporting the use of force

6. Patrol alone or with limited back up

7. Wear bullet resistant vests

If non-sworn Park Agents, Rangers or Park Service Officers are permitted to use force by internal agency policy, it is required that they be trained properly, however information should be clearly codified as to the specific do's and don'ts. Police chiefs and directors of park law enforcement agencies should prepare to align internal policies to be consistent with the Graham decision and teach the non-sworn positions about the standards. In this manner, park enforcement agencies will be somewhat insulated although not entirely so, from use of force issues stemming from civilian staff attempts at taking others into custody.

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Matt Stiehm was born and raised in Minnesota. He received an Educational Doctorate from Argosy University, where the focus of his research was campus safety and security. He has a Masters Degree of Criminal Justice from Central Missouri State University, with his final paper which focused on the investigation of child abuse and finally a Bachelors of Science from Wayne State College, Nebraska. He has served as a police officer in three states (CA, MN and NE), he keeps current on law enforcement trends. He currently is a member of ILEETA, MN Infragard, FBI LEEDS, an Associate Member of the IACP, Support Member of the MN Chiefs Association and the Midwestern Criminal Justice Association.