

For the International Municipal Lawyer's Association - IMLA's 5 things to know for April 3rd

1. There are some interesting cases today. From the 11th Circuit, that court concluded that in an appeal by a wireless carrier over a decision not to grant a tower permit that the 30 day window within which to appeal was not closed when the local government acted, but only when its minutes were approved at a subsequent meeting. To me the case does not seem to square well with the *Roswell* case interpreting other provisions of the "shot clock" statute. Hopefully, we can get some folks with FCC expertise to weigh in.

<http://media.ca11.uscourts.gov/opinions/pub/files/201512067.pdf>

2. Also in the 11th Circuit, a driver saw what appeared to be a car crashed on the side of the road and stopped to render assistance with others. When advised that emergency services was on the way, the driver began taking pictures along with other of the folks who had stopped. A deputy sheriff grabbed his phone and wouldn't give it back asserting that the phone had evidence of a crime in its pictures. Should the officer get qualified immunity based on the seizure? Nope. A significant effort to eliminate qualified immunity as a defense is developing among academics and other anti-police groups. Some consideration should be given to limiting the use of the defense in cases where it's clearly inappropriate and also to increase officer training. Seriously, the officer thought seizing the phone did not violate some right?

<http://media.ca11.uscourts.gov/opinions/pub/files/201713526.pdf>

3. So back to the 11th Circuit and Qualified Immunity, but in this case the question involved the Drivers Privacy Protection Act. Seeking to limit expansion of the law involving open carry by the Florida Legislature a legislative affairs officer used driver data to identify members of a motorcycle gang and recover their booking photos to have the legislative members consider if these were folks who should be carrying weapons openly. They already had concealed carry permits. The DPPA was not violated as lobbying can be and was a governmental function and the court concluded qualified immunity was a defense to violations of the DPPA.

<http://media.ca11.uscourts.gov/opinions/pub/files/201711225.pdf>

4. Moving from the 11th Circuit to the 7th but sticking with Qualified Immunity, an officer was denied immunity by the 7th Circuit in a pro se case where the Plaintiff inartfully pled a claim for denial of medical treatment. The woman was stopped and arrested for Operating While Intoxicated. She claimed that when arrested she was suffering a medical issue. She wasn't quite so insistent during the stop.

<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D04-02/C:16-1875:J:Ripple:aut:T:fnOp:N:2132330:S:0>

5. Again in the context of Qualified Immunity we turn to the 8th Circuit where officers were denied immunity by the lower court, but the panel for that circuit concluded erroneously so. The officers were called to deal with the health of a mentally ill man whose family was worried that he may be a harm to himself. In attempting to get the man calmed down and to a hospital for treatment, the man resisted and the officers applied force including a taser. The court concluded that the force used was appropriate to the circumstances. In doing so the court discussed the difference between force applicable in arrest versus the circumstance here.

<http://media.ca8.uscourts.gov/opndir/18/03/171971P.pdf>

It's not too late, but it's going to be soon to join over 300 of your colleagues at the IMLA Seminar and Section 1983 defense program. Get more from IMLA by joining. Not a member? Contact us. Sign up at www.imla.org . Have a great day and make it an inspirational one.