Cases



Civil Rights

Tasering and Excessive Force

Officer Fiorino saw Oliver standing in the street, trying to flag her down. When he approached the police cruiser, Fiorino told him to get away from the car, which he did. Oliver did not speak before Fiorino pulled out her Taser gun and asked him what the problem was. Oliver responded by saying "they're shooting at me" several times, pointing across the street. He walked quickly towards the officer, but complied with her instructions to keep a distance. When a second officer arrived, Oliver also complied with his requests to show identification, but resisted his attempts to lead him across the street. Despite the fact that Oliver did not grab or swing at the officers, Fiorino tased Oliver, who fell to the ground and remained there without getting back up. Three to four seconds after the first Taser cycle ended, Fiorino tased Oliver once again, and then a third time. Bystanders testified that Oliver never hit or threatened the officers, and that the second officer watched Oliver being tased and did nothing. Fiorino loaded a second cartridge into her Taser and began tasing Oliver again. After the eighth recorded tase (all in a two-minute period), Oliver was lying flat and he did not get up. He suffered a seizure at the scene and died several days later. His family brought a Section 1983 action alleging a violation of Oliver's Fourth Amendment rights by the use of excessive and unwarranted force. The plaintiff's expert witness testified that, "to a reasonable degree of medical certainty," Oliver's death was due to "ventricular dysrhythmia in conjunction with Rhabdomyolisis" as a result of "being struck by a Taser." Officer Fiorino and the second officer sought summary judgment on the ground of qualified immunity but the district court denied the motion, concluding that, on the fact pattern, the officers were not entitled to immunity. They appealed.

Under the qualified immunity standard rearticulated by the Supreme Court in *Pearson v. Callahan*, 129 S.Ct. 808 (2009), the courts were obliged to grant qualified immunity to a law enforcement officer unless the plaintiff could demonstrate: first, that the facts, when viewed in a light most favorable to the plaintiff, established a constitutional violation; second, that the illegality of the officer's actions was "clearly established" at the time of the incident. The U.S. Court of Appeals for the Eleventh Circuit held that the officers were not entitled to qualified immunity. Oliver posed no immediate threat of danger to the officers or anyone else, beyond a moment of struggle with the second officer. He "did not act belligerently toward the police officers, and he did not curse or yell at them. In fact, he was largely compliant and cooperative." While the "initial use of force (a single Taser shock) may have been justified, the repeated tasering of Oliver into and beyond his complete physical capitulation was grossly disproportionate to any threat posed and unreasonable under the circumstances." Further, although no decision from the United States Supreme Court, the Eleventh Circuit, or the Florida Supreme Court had addressed the issue, the court ruled that the officers had violated a clearly established right: the "force employed was so utterly disproportionate to the level of force reasonably necessary that any reasonable officer would have recognized that his actions were unlawful." *Oliver v. Fiorino*, No. 08-15081, 2009 WL 3417869 (11th Cir. Oct. 26, 2009).

Excessive Force and "Four-Point Restraints"

Early one morning, two sheriffs' deputies responded to a call about a fight between two women and found Debbie Loggins holding another woman in a headlock. When Loggins refused to release her, one of the deputies tried to handcuff Loggins. Loggins released the woman to attack the deputy, forcing him to the ground and pummelling him with his own flashlight. The deputies managed to handcuff Loggins, but, because she continued to kick and otherwise resist the deputies, they could not get her into the patrol car. They placed Loggins in four-point restraints, linking her leg restraints to her handcuffs with an additional set of handcuffs, and lifted her into the car. At the courthouse, the still-fighting Loggins was transferred to another officer's car for the trip to the jail. Loggins became quiet during this trip and upon arrival, was found unresponsive and without a pulse. The exact cause of death was unclear, but Loggins was obese and hypertensive, and drugs and alcohol were ruled out. Loggins's mother sued the deputies and the County under 42 U.S.C. § 1983 for claims arising out of her daughter's death. The plaintiff's expert opined that the cause of death was positional asphyxia related to the use of the restraints. The district court granted motions for summary judgment in favor of the defendants, finding the deputies were entitled to qualified immunity and that the County was not liable. The plaintiff appealed, and the U.S. Court of Appeals for the Fifth Circuit affirmed.

The death of the suspect while being transported to jail was not the result of the use of excessive force. To recover in an excessive force claim, a plaintiff had to show an injury, which resulted from the use of force that was clearly excessive to the need, and the excessiveness of which was objectively unreasonable. Here, no material facts were in dispute except the cause of Loggins's death (which the court assumed was due to positional asphyxia), and no reasonable jury could have found that the deputies used excessive force to subdue Loggins. From the onset, Loggins had resisted and fought the officers with a "level of demonstrated