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

violence" that required and justified "stern control measures." She had not exhibited evidence of drug abuse or cocaine-induced psychosis, nor had the deputies used any vertical pressure, all of which were risks associated with four-point restraints, and the plaintiff's medical expert's testimony failed to raise a material fact issue that the use of four-point restraints was objectively unreasonable. The mere existence of alternatives to the restraints (which were admittedly more difficult for the officers or more risky for Loggins) was "not probative of the excessiveness of four-point restraints." Addressing the issue of an alleged failure to monitor a detainee during transport, the court noted this claim "sounds not in the Fourth Amendment but in the Fourteenth," and required the plaintiff to show that the officers acted with subjective knowledge of a substantial risk of serious medical harm, followed by a response of deliberate indifference. This was not supported by the record. "No evidence supports a fact issue that the deputies acted with deliberate indifference toward Loggins at any time." *Hill v. Carroll County, Miss.*, No. 08-60516, 2009 WL 3448137 (5th Cir. Oct. 28, 2009).

Excessive Force and Handcuffing

In a domestic dispute between Amanda Morrison and her mother, Morrison left the house screaming "I could just kill myself," which prompted her sister to call 911. An officer arrived and found Morrison sitting, alone, in front of a neighbor's house. After talking with Morrison, the officer told her that he would have to take her to the hospital for a psychiatric evaluation. The parties disputed what happened next: Morrison said she got up to walk into the house; the officers stated that she jumped up to flee. However, what happened next was undisputed: Morrison was tackled from behind by Officer Celender. Morrison claimed that he also handcuffed her tightly, to the point where her skin turned black and blue (though the injury was very short-lived). Her repeated requests to have the cuffs loosened were supposedly ignored, and she alleged further that every time she tried to talk, Celender would push her face into the ground. Paramedics arrived and treated Morrison for a sprained ankle; she was transported to hospital and released later that day. Morrison sued the officers and their employer, Green Township, in a Section 1983 action, alleging excessive force, seizure without probable cause, and a failure to train.

The district court granted summary judgment in favor of the defendants on all claims except the excessive force claim, ruling that Celender was not entitled to qualified immunity. Celender appealed, and the U.S. Court of Appeals for the Sixth Circuit affirmed. The appellate court applied unreasonable seizure jurisprudence in analyzing the excessive force claim. The Fourth Amendment prohibited unduly tight or excessively forceful handcuffing during the course of a seizure. *Kostrzewa v. City of Troy*, 247 F.3d 633 (6th Cir. 2001). To succeed on a summary judgment motion, a plaintiff was required to show sufficient evidence that he or she had complained that the handcuffs were too tight; the officer ignored the complaints; and the plaintiff suffered physical injury as a result. The court focused on the third factor, as Celender argued that just bruising and wrist-marks were insufficient. The Sixth Circuit, however, disagreed, finding that, under its existing jurisprudence, bruising and wrist-marks could create a genuine issue of material fact with regard to the physical injury requirement. With regards to Morrison's excessive force claim based on the head-pushing, the court also found in Morrison's favor. Using an objective reasonableness standard, the court rejected Celender's argument that his use of force was reasonable because of his concern for officer safety and given the limited nature of Morrison's injuries. The Sixth Circuit had consistently held that "use of force after a suspect has been incapacitated or neutralized [was] excessive as a matter of law." Celender admitted that Morrison was totally compliant while being handcuffed, and had not tried to flee or struggle. The limited nature of injuries was not decisive: Celender "essentially asks this court to impose a blanket de *minimis* injury requirement for excessive force claims… [and] while an excessive force claim may be established through evidence of severe injury or physical contact, this Circuit has not required that this must be the case." *Morrison v. Board of Trustees of Green Township*, 583 F. 3rd 384 (6th Cir. 2009).

Due Process, Notice, and Towing

The California Vehicle Code permitted towing of vehicles that were "parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal." The Code also preempted municipal vehicle ordinances inconsistent with its provisions. The City of Los Angeles had enacted a provision that prohibited parking in an otherwise legal public spot "for more than 72 hours in the aggregate during any period of 73 hours." Lone Star Security & Video, Inc. attached advertisements to a number of mobile trailers and parked the trailers for extended periods on residential streets in Los Angeles. Over several years, the Los Angeles Police Department (LAPD) and the Los Angeles Department of Transportation (DOT) had impounded 77 of Lone Star's trailers for having been parked longer than the 72-hour period permitted under the local code. The LAPD and LADOT had forms or notices that could be left on a vehicle to notify the owner that the vehicle could be towed for parking for longer than 72 hours, and had policies regarding attaching the forms to any vehicle belonging to a first-time offender. For repeat offenders, however, the officer had discretion on whether to attach the form.

Lone Star brought a Section 1983 action contending that its federal due process rights were violated because the City gave inadequate notice before towing its vehicles, and because California's Code preempted the City's ordinance. The district court granted summary judgment in favor of Lone Star on the preemption claim, but held that the City was not constitutionally required to provide notice each time it towed a vehicle, and awarded damages to Lone Star reflecting the overall losses for all of its trailers towed under local

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